INDIANA SUPREME COURT

In re Carmouche

23 N.E.3d 661 (Ind. 2014) · Decided December 18, 2014

SUMMARY

The Indiana Supreme Court approved a conditional agreement disciplining an attorney who commingled client funds with personal and business funds and made unauthorized trust-account withdrawals. The Court imposed a six-month suspension, stayed subject to at least two years of probation with trust-account monitoring and other conditions.

CASE DETAILS

COURT	Indiana Supreme Court
WRITING FOR THE COURT	Loretta H. Rush, Chief Justice
JURISDICTION	Indiana
DECIDED	December 18, 2014
DISPOSITION	approved
PROCEDURAL POSTURE	The Indiana Supreme Court reviewed a Statement of Circumstances and Conditional Agreement for Discipline submitted jointly by the Indiana Supreme Court Disciplinary Commission and the respondent attorney.
PRECEDENTIAL VALUE	Published disciplinary order; precedential as to the disposition and approval of the agreed discipline.

TOPICS

bankruptcy · trustee duties · trusts

PRACTICE AREAS

legal ethics and professional discipline · bankruptcy law · client trust accounts

QUESTIONS PRESENTED

1. Whether the court should approve the parties' Statement of Circumstances and Conditional Agreement for Discipline.
2. What discipline was appropriate for commingling client and attorney funds, failing to deposit advance fees and expenses into a client trust account, and making unauthorized trust-account withdrawals.

HOLDINGS

1. The Indiana Supreme Court approved the parties' Conditional Agreement for Discipline and imposed a six-month suspension from the practice of law, stayed subject to completion of at least two years of probation.

KEY QUOTATIONS

> *“For Respondent’s professional misconduct, the Court suspends Respondent from the practice of law for a period of six months, beginning on the date of this order, all stayed subject to completion of at least two years of probation.”* (23 N.E.3d at 662)

> *“Notwithstanding the expiration of the minimum term of probation set forth above, Respondent’s probation shall remain in effect until it is terminated pursuant to a petition to terminate probation filed under Admission and Discipline Rule 23(17.1).”* (23 N.E.3d at 663)

FACTUAL BACKGROUND

Carmouche practiced exclusively in consumer bankruptcy law and maintained a trust account and a business account. She made at least five electronic transfers from the trust account without written withdrawal authorizations or signed attorney approval. She also deposited client filing fees and advance expenses, along with personal funds, into a nontrust business account and made dozens of disbursements from that account unrelated to any client.

PROCEDURAL HISTORY

The Disciplinary Commission and Respondent Loretta H. Carmouche submitted an agreed statement of facts and proposed discipline under Indiana Admission and Discipline Rule 23(11). The Indiana Supreme Court approved the agreement and imposed a stayed six-month suspension subject to at least two years of probation.

DISPOSITION

approved

OPINION

RUSH, J.

PUBLISHED ORDER APPROVING STATEMENT OF CIRCUMSTANCES AND CONDITIONAL AGREEMENT FOR DISCIPLINE LORETTA H. RUSH, Chief Justice. Pursuant to Indiana Admission and Discipline Rule 23(11), the Indiana Supreme Court Disciplinary Commission and Respondent have submitted for approval a “Statement of Circumstances and Conditional Agreement for Discipline” stipulat*662ing agreed facts and proposed discipline as summarized below: Stipulated Facts: Respondent practices exclusively in the area of consumer bankruptcy law.

In connection with her practice, Respondent maintains a “Trust Account” and a “Business Account.” Respondent did not deposit or hold client funds in her Trust Account. Respondent’s Business Account is not a trust account and is not registered as an IOLTA.

On at least five occasions, Respondent disbursed funds from her Trust Account using an electronic funds transfer. These transfers were not based on a written withdrawal authorization and did not contain the signed approval of an attorney.

As part of her practice, Respondent would collect filing fees and certain other advance expenses from her clients. Respondent deposited and held those filing fees and advance expenses, as well as her own personal funds, in her Business Account. During the period from December 2013 through April 2014, Respondent made dozens of disbursements from her Business Account that were not associated with or for the benefit of any client.

The parties cite as an aggravating fact that Respondent’s actions were part of a pattern of misconduct. The parties cite as mitigating facts that Respondent fully cooperated with the Commission’s investigation and has no prior disciplinary history. Violations: The parties agree that Respondent violated the following rules governing professional conduct: Ind. Professional Conduct Rules: 1.15(a): Commingling client and attorney funds.

1.15(c): Failure to deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred. Ind. Admission and Discipline Rules: 23(29)(a)(4): Commingling client funds with other funds of the attorney or firm. 23(29)(a)(5): Making withdrawals from a trust account without written withdrawal authorization stating the amount and purpose of the withdrawal and the payee.

Discipline: The Court, having considered the submission of the parties, now approves the following agreed discipline. For Respondent’s professional misconduct, the Court suspends Respondent from the practice of law for a period of six months, beginning on the date of this order, all stayed subject to completion of at least two years of probation.

The Court incorporates by reference the terms and conditions of probation set forth in the parties’ Conditional Agreement, which include: (1) Respondent shall procure the services of a certified public accountant, who shall evaluate Respondent’s trust account management practices and procedures and report quarterly to the Commission.

(2) Respondent shall have no violations of the criminal laws of Indiana or the Rules of Professional Conduct during her probation. (3) If Respondent violates the terms of her probation, the Commission shall move to revoke her probation. If probation is revoked, the stay of Respondent’s suspension shall be vacated and the suspension shall be actively served without automatic reinstatement.

(4) Even after expiration of Respondent’s term of probation, the Commission reserves the right to seek revocation of probation if there is a *663judicial finding that Respondent violated a criminal law or the Rules of Professional Conduct during the term of her probation. Notwithstanding the expiration of the minimum term of probation set forth above, Respondent’s probation shall remain in effect until it is terminated pursuant to a petition to terminate probation filed under Admission and Discipline Rule 23(17.1).

The costs of this proceeding are assessed against Respondent. All Justices concur.